

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5272 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KAMALSINH D BIST

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner
Ms Manisha Lavkumar, AGP, instructed by
M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has challenged the termination order terminating the petitioner's services from the post of peon. The petitioner was appointed as a peon in the Health and Family Welfare Department of the State Government on temporary and ad hock basis with

effect from 13.10.1983 as per the order dated 31.11.1983 (Annexure-A to the petition).

2 The petitioner moved this Court and by order dated 6.10.1986 while issuing the notice this Court directed the respondents to maintain the status quo. The matter was adjourned from time to time and in spite of the opportunity having been given the respondents did not file any affidavit-in-reply at the relevant time. The order dated 17.3.1987 of this Court specifically mentioned that the learned AGP had not received instructions in the matter and ultimately on 31.3.1987 this Court admitted the petition and granted ad interim relief restraining the authorities from terminating the services of the petitioner and directing the respondent to allow the petitioner to discharge his duty without any break hindrance or interference.

3 The petition has reached hearing now. Affidavit-in-reply dated 18.8.1999 is filed by Shri J.L.Patel, Under Secretary in Health and Family Welfare Department. The affidavit seeks to deny the allegations made by the petitioner regarding the continuance of persons junior to the petitioner. It further states that since the petitioner was not appointed through the Employment Exchange on the Social Welfare Department, petitioner's appointment was irregular and the petitioner's services were validly terminated. Reliance is also placed on the terms and conditions of the order of appointment that the appointment was ad hoc and temporary and it could be terminated without giving any notice.

4 Still the fact remains that the petitioner has continued in service since 1983 and has thus put in about 16 years of service. After putting in four more years the petitioner would even be eligible for opting for voluntary retirement. By now, the petitioner must have become age-barred for becoming eligible for any other public employment. It is also required to be mentioned that even while stating that the petitioner was not selected through employment exchange and therefore his services were irregular, it is not the case of the respondent that the services of the petitioner were terminated on account of availability of a regularly recruited candidate.

5 Having regard to the aforesaid peculiar facts and circumstances of the case, it appears to the Court that interests of justice would be served if the petition is disposed of with a direction to consider the petitioner's

case for regularisation in service. In order to enable the Government to consider his case, it will be open to the petitioner to make a representation to the State Government within two months from today. Upon receipt of such representation, and after giving the petitioner a reasonable opportunity of being heard, the respondents shall consider the representation within three months from the date of receipt of the representation. If the representation is decided against the petitioner, it will be open to the petitioner to challenge the same. If the decision is adverse to the petitioner, the same shall not be implemented for a period of one month from the date of communication of the decision to the petitioner by registered post A/D.

6 The petition is disposed of in terms of the aforesaid directions with no order as to costs.

(mohd)